

agencies. For purposes of this appendix, “listed species” and “critical habitat” shall have the same meanings as set forth in 50 CFR 402.02. The certificate holder shall be deemed in compliance with §157.206(b)(2)(vi) of the Commission’s regulations only if, prior to constructing facilities or abandoning facilities by removal under the blanket certificate, it complies with the following procedures:

1. The certificate holder shall contact the appropriate regional office of either the FWS or the NMFS (or both the FWS and the NMFS, if appropriate) as determined pursuant to 50 CFR 402.01 for the purpose of initiating informal consultations.

2. The certificate holder shall be deemed in compliance with §157.206(b)(2)(vi) of the Commission’s regulations if the consulted agency (either the FWS or NMFS, or both if appropriate) initially determines, pursuant to the informal consultations:

(a) That no listed species or its critical habitat occur in the project area; and

(b) That no species proposed to be listed under 16 U.S.C. 1533 or its critical habitat occur in the project area.

3. If the consulted agency, pursuant to the informal consultations, initially determines that any species proposed to be listed under 16 U.S.C. 1533 or its critical habitat occur in the project area, then the certificate holder shall confer with the consulted agency on how potential impact can be avoided or reduced. Upon completion of the conference and the implementation of any mitigating measures the certificate holder elects to implement, and compliance with paragraph 4 of this Appendix, if applicable, the certificate holder shall be deemed in compliance with §157.206(b)(2)(vi) of the Commission’s regulations.

4. (a) If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or its critical habitat may occur in the project area, then the certificate holder shall continue informal consultation with the consulted agency to determine if the proposed project may affect such species or habitat. Continued informal consultations may include discussions with experts (including experts provided by the consulted agency), field surveys, biological assessments, and formulation of mitigation measures.

(b) The certificate holder shall be deemed in compliance with §157.206(b)(2)(vi) of the Commission’s regulations if the consulted agency agrees with the certificate holder’s determination resulting from the continued informal consultations, that the proposed project is not likely to adversely affect a listed species or critical habitat, or that no further consultation is necessary.

(c) If the consulted agency does not agree with such determination by the certificate holder, or if the certificate holder concludes

that the proposed project may affect listed species or the critical habitat of such species, then the certificate holder may not proceed with the proposed project under the blanket certificate.

[Order 234, 47 FR 24266, June 4, 1982, as amended by Order 436, 50 FR 42491, Oct. 18, 1985; Order 603, 64 FR 26609, May 14, 1999; Order 603-A, 64 FR 54537, Oct. 7, 1999]

#### APPENDIX II TO SUBPART F OF PART 157—PROCEDURES FOR COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 UNDER §157.206(b)(3)(ii)

The following procedures apply to any certificate holder which undertakes a project under the authority of a blanket certificate issued pursuant to subparts E or F of part 157 and to any other service subject to §157.206(b) of the Federal Energy Regulatory Commission’s (Commission) regulations. For the purposes of this appendix, the following definitions apply:

(a) “Listed property” means any district, site, building, structure or object which is listed (1) on the National Register of Historic Places, or (2) in the FEDERAL REGISTER as a property determined to be eligible for inclusion on the National Register.

(b) “SHPO” means the State Historic Preservation Officer or any alternative person duly designated, in accordance with section (1)(b) of Appendix II to Subpart F, to advise on cultural resource matters.

(c) “Unlisted property” means any district, site, building, structure or object which is not a listed property.

(d) “THPO” means the Tribal Historic Preservation Officer, as defined at 36 CFR 800.2(c)(2).

The certificate holder shall be deemed to be in compliance with §157.206(b)(2)(iii) of the Commission’s regulations only if, prior to constructing facilities or abandoning facilities by removal under the blanket certificate, it complies with the following procedures:

(1)(a) If federally administered land would be directly affected by the project, then the procedures used by the appropriate Tribal or Federal land managing agency to comply with section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, shall take precedence over these procedures. The procedures in this appendix apply to State and private lands, and Federal lands for which there are no other Federal procedures.

(b) If there is no SHPO, or THPO, if appropriate, or if the SHPO, or THPO, as appropriate, declines to consult with the certificate holder, the certificate holder shall so inform the environmental staff of the Office of Energy Projects and shall not proceed with these procedures or the project until an

alternate consultant has been duly designated.

(2) It shall be the certificate holder's responsibility to identify or cause to be identified listed properties and unlisted properties that satisfy the National Register Criteria for Evaluation (36 CFR 1202.6), that are located within the area of the project's potential environmental impact and that may be affected by the undertaking.

(3) The certificate holder shall:

(a) Check the National Register of Historic Places and consult with the SHPO, or THPO, as appropriate, to identify all listed properties within the area of the project's potential environmental impact;

(b) Consult with the SHPO, or THPO, as appropriate, and to the extent deemed appropriate by the SHPO, or THPO, as appropriate, check public records and consult with other individuals and organizations with historical and cultural expertise, to determine whether unlisted properties that satisfy the National Register Criteria for Evaluation are known or likely to occur within the area of the project's potential environmental impact; and

(c) Consult with the SHPO, or THPO, as appropriate, to determine the need for surveys to identify unknown unlisted properties. The certificate holder shall evaluate the eligibility of any known unlisted properties located within the area of the project's potential environmental impact according to the National Register Criteria for Evaluation.

(4) The certificate holder shall be deemed in compliance with §157.206(b)(2)(iii) of the Commission's regulations if the SHPO, or THPO, as appropriate, agrees with the certificate holder that no survey is required, and that no listed properties or unlisted properties that satisfy the National Register Criteria for Evaluation occur in the area of the project's potential environmental impact.

(5) If the SHPO, or THPO, as appropriate, determines that surveys are required to ensure that no listed properties, or unlisted properties that satisfy the National Register Criteria for Evaluation, occur within the area of the project's potential environmental impact, the certificate holder shall perform surveys deemed by the SHPO, or THPO, as appropriate, to be of sufficient scope and intensity to identify and evaluate such properties. The certificate holder shall submit the results of the surveys including a statement as to which unlisted properties satisfy the National Register Criteria for Evaluation, to the SHPO and solicit comments on the surveys and the conclusions.

(6) The certificate holder shall be deemed in compliance with §157.206(b)(2)(iii) of the Commission's regulations if, upon conclusion of the surveys, the certificate holder and the

SHPO, or THPO, as appropriate, agree that no listed properties, and no unlisted properties which satisfy the National Register Criteria for Evaluation, occur in the area of the project's potential environmental impact.

(7) For each listed property, and each unlisted property which satisfies the National Register Criteria for Evaluation, which is located within the area of the project's potential environmental impact, the certificate holder, in consultation with the SHPO, or THPO, as appropriate, shall apply the Criteria of Effect (36 CFR 800.5) to determine whether the project will have an effect upon the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria for Evaluation. The certificate holder shall be deemed in compliance with §157.206(b)(2)(iii) of the Commission's regulations if the certificate holder and the SHPO, or THPO, as appropriate, agree that the project will not affect these characteristics.

(8) If either the certificate holder or the SHPO, or THPO, as appropriate, finds that the project may affect a listed property or an unlisted property which satisfies the National Register Criteria for Evaluation, located within the area of the project's potential environmental impact, then the project shall not be authorized under the blanket certificate unless such properties can be avoided by relocation of the project to an area where the SHPO, or THPO, as appropriate, agrees that no listed properties or unlisted properties that satisfy the National Register Criteria for Evaluation occur. The certificate holder shall be deemed in compliance with §157.206(b)(2)(iii) of the Commission's regulations if the project is relocated as described above.

(9) If the certificate holder and the SHPO, or THPO, as appropriate, are unable to agree upon the need for a survey, the adequacy of a survey, or the results of application of the National Register Criteria for Evaluation to an unlisted property, the project shall not be authorized under the blanket certificate.

[Order 603, 64 FR 26610, May 14, 1999, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999; Order 699, 72 FR 45325, Aug. 14, 2007]

### **Subpart G—Natural Gas Producer Blanket Authorization for Sales and Abandonment [Reserved]**